



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0302]**

**RIN 1625-AA00**

**Safety Zone: Cape Fear River, Wilmington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone on the navigable waters of the Cape Fear River near Wilmington, North Carolina. This temporary safety zone is intended to restrict vessel traffic on the Cape Fear River from July 15, 2019, through October 31, 2019, while work crews replace power transmission lines crossing over the river. This proposed rulemaking would prohibit vessels or persons from being in the safety zones unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0302 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY

INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772-2221, email: [Matthew.I.Tyson@uscg.mil](mailto:Matthew.I.Tyson@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| COTP   | Captain of the Port             |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

### **II. Background, Purpose, and Legal Basis**

On April 23, Duke Energy provided the Coast Guard with details concerning the upgrading of towers and replacement of power transmission lines crossing over the Cape Fear River near Wilmington, North Carolina, to be conducted from July 15, 2019, through October 31, 2019. Work will be done on two steel towers located at approximate positions 34°08'52"N, 077°57'14"W and 34°08'59"N, 077°56'56"W (NAD 1983), and the power transmission lines suspended between those towers. This upgrade process will require the complete closure of the navigation channel on multiple days during the stated upgrade period. A safety zone is proposed within 100 yards of the power transmission line crossing. The Captain of the Port (COTP) North Carolina has determined that potential safety hazards associated with power transmission line replacement work would be a concern for anyone transiting the Cape Fear River.

The purpose of this rule is to protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during the replacement of power transmission lines crossing over the river. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP proposes to establish a safety zone on a portion of the Cape Fear River from July 15, 2019, through October 31, 2019, to be enforced while Duke Energy replaces power transmission lines over the river. Duke Energy reports its work crews will need to access the navigation channel for 12, 8-hour days, 3 days at a time, over 4 separate weeks, in order to replace the power transmission lines. Due to the nature of the work and the hazards it presents to the workers and the public, the COTP has identified the need to close that Cape Fear River in the vicinity of the power line crossing while this work is ongoing. On days the safety zone will be enforced, the affected section of the river will be closed from 6:30 a.m. through 2:30 p.m. Currently, the planned enforcement dates are July 29th through 31st, August 12th through 14th, September 3rd through 5th, and September 16th through 18th, 2019. These times and dates may change due to weather and equipment delivery changes. Exact dates and times will be announced by broadcast notice to mariners at least two days prior to each closure. This safety zone will include all navigable waters of the Cape Fear River within 100 yards of the power transmission line crossing, from approximate position 34°08'49"N, 077°57'32"W, then northeast to 34°09'07"N, 077°56'41"W, then south along the shoreline to 34°09'03"N, 077°56'41"W, then southwest to 34°08'42"N, 077°57'28"W, then north along the shoreline to the point of origin. No vessel or person will be permitted to enter the safety

zone unless specifically authorized by the COTP or a designated representative. Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the proposed safety zone. Vessels will not be allowed to enter or transit a portion of the Cape Fear River for 96 hours over a 4-week period from July 15, 2019, through October 31, 2019, during active power transmission line replacement as described in the text above. The closures are planned to occur on 12, 8-hour days, 3 days at a time, over 4

separate weeks. Due to the nature of the work and the hazards it presents to the workers and the public, the COTP has identified the need to close that Cape Fear River in the vicinity of the power line crossing while this work is ongoing. On days the safety zone will be enforced, the affected section of the river will be closed from 6:30 a.m. through 2:30 p.m. The specific enforcement times for channel closures will be broadcast at least 48 hours in advance and vessels will be able to transit the Cape Fear River at all other times. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. This portion of the Cape Fear River has been determined to be a high traffic area. Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would

not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule would establish a temporary safety zone. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or

information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all



public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0302 to read as follows:

#### **§ 165.T05-0302 Safety Zone; Cape Fear River, Wilmington, NC.**

(a) Location. The following areas is a safety zone: All navigable waters of the Cape Fear River within 100 yards of the power transmission line crossing, from approximate position 34°08'49"N, 077°57'32"W, then northeast to 34°09'07"N, 077°56'41"W, then south along the shoreline to 34°09'03"N, 077°56'41"W, then southwest to 34°08'42"N, 077°57'28"W (NAD 1983), then north along the shoreline to the point of origin near Wilmington, NC.

- (b) Definitions. As used in this section---

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Work crews means persons and vessels involved in the replacement of power transmission lines.

(c) Regulations. (1) The general regulations governing safety zones in § 165.23 apply to the areas described in paragraph (a) of this section.

(2) With the exception of work crews, entry into or remaining in this safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone immediately.

(3) Vessels with an air draft less than 30 feet will be permitted to pass through the safety zone approximately every two hours during enforcement, when directed by the Coast Guard or designated security vessels.

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement Period. This regulation will be enforced for 12, 8-hour days, 3

days at a time, over 4 separate weeks from July 15, 2019, through October 31, 2019. On days the safety zone is being enforced, the affected section of the river will be closed from 6:30 a.m. through 2:30 p.m. The enforcement dates are July 29th through 31st, August 12th through 14th, September 3rd through 5th, and September 16th through 18th, 2019. These times and dates may change due to weather and equipment delivery changes.

(f) Public Notification. The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: May 17, 2019

Bion B. Stewart,  
Captain, U. S. Coast Guard  
Captain of the Port North Carolina.

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